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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,118	03/24/2004	Zachary D. Wiseman	120-001-1	3669

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EXAMINER
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REESE, DAVID C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/807,118

Applicant(s)

WISEMAN, ZACHARY D.

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) 6,7 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5,8 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

THIS FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 6/22/2006.

- Claim 1 was canceled.
- Claim 21 was added.
- Claims 2-4, and 11 were amended.
- Claims 6-7, and 15-20 are withdrawn (see below).
- Claims 2-21 are pending.
- A New Abstract and Replacement Drawings to Figs. 1-6 were filed for entry.

#### ***Election/Restrictions***

[1] This application contains claims 6-7, and 15-20 drawn to a species nonelected without traverse in Paper No. 10/11/2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

#### ***Drawings***

[2] The drawings were previously objected for informalities. Applicant submitted replacement drawings on 6/22/2006 to overcome the objections. These drawings are incorrectly labeled. Consistent with 37 CFR 1.84 and 1.121(d), all submitted drawings must be identified as: "Replacement Sheet" (for amended drawings), "New Sheet", or "Annotated Sheet" (for a marked up copy). The previous objection(s) to the drawings have been withdrawn; however, formal drawings with appropriate labels are required.

In addition to marked-up copies including annotations indicating the changes made to the previous version, applicant is required to submit replacement sheets containing the corrected drawing figure(s). Each replacement sheet must be clearly labeled as "Replacement Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the

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drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

***Specification***

[3] The abstract and disclosure were previously objected to for informalities. Applicant has successfully addressed these issues in the amendment filed on 6/22/2006. Accordingly, the objection(s) to the specification have been withdrawn, and the applicant's amendment (new abstract) to the specification has been entered.

***Claim Objections***

[4] Claim(s) 4 and 11 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 6/22/2006. Accordingly, the objection(s) to the claim(s) 4 and 11 have been withdrawn.

***Claim Rejections - 35 USC § 102***

[5] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

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international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[6] Claims 2-5, 8, 11-14, and 21 are rejected under 35 U.S.C. 102(e) as clearly anticipated by Fukuda, US-2004/0126621.

The shape and appearance of Fukuda is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 21, Fukuda teaches of an articulated band (Fig. 5), comprising:

a plurality of magnetic components (5a, 5b);

first and second opposite magnetic poles (Fig. 6) define within opposite ends of each one of said plurality of magnetic components (5a, 5b) to be magnetically attracted toward and operatively connected to another one of said plurality of magnetic components (R) when a first one of said opposite magnetic poles of said any one of said plurality of magnetic components is operatively engaged with a second one of said opposite magnetic poles of said another one of said plurality of magnetic components (Fig. 6); and

surface contour means defined upon each one of said plurality of magnetic components (5a, 5b) for permitting universal rotational movement (it is inherent that the magnetic components can be rotated relative to one another) of each one of said plurality of magnetic components with respect to an adjacent one of said plurality of magnetic components (5a, 5b) operatively connected to said each one of said plurality of magnetic components (5a, 5b), around three mutually orthogonal axes (example of intended use, provides for no additional structure for the claimed invention-see examiner's response to arguments below).

Re: Claim 2, wherein each one of said plurality of magnetic components (5a, 5b) has a spherical configuration such that said surface contour means defines point-to-point contact loci when each one of said plurality of magnetic components is magnetically attracted and connected to an adjacent one of said plurality of magnetic components (Fig. 6).

Re: Claim 3, wherein said articulated band comprises a continuous, uninterrupted, endless loop (1 in Fig. 5).

Re: Claim 4, said endless loop (1) comprises a jewelry item selected from the group comprising a necklace, a bracelet, a ring, and an earring.

Re: Claim 5, wherein each one of said plurality of magnetic components (5a, 5b) has the same diametrical extent (Figs. 5, 6).

Re: Claim 8, further comprising a plurality of ferromagnetic components (5c, 5d) magnetically attracted to said plurality of spherically configured magnetic components (5a, 5b).

Re: Claim 11, wherein each one of said magnetic components (5a, 5b) has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings ([0050]).

Re: Claim 12, wherein said coating is selected from the group comprising gold ([0050]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

Re: Claim 13, wherein each one of said magnetic components, and each one of said ferromagnetic components, has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings ([0050]).

Re: Claim 14, wherein said coating is selected from the group comprising gold ([0050]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

***Allowable Subject Matter***

[7] Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As for Claims 9-10, the prior art, incorporating other corresponding limitations as set forth above, does not teach of a plurality of ferromagnetic components that are disposed within a plurality of annular arrays defined around contact loci of adjoining magnetic components.

***Response to Arguments***

[8] Applicant's amendment and arguments filed 6/22/2006 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Applicant states that the difference between the prior art of Fukuda and the instant invention is that Fukuda does not teach of the magnetic components able to be universally rotated with respect to its adjacent magnetic component around any one of three mutually orthogonal axes. The examiner disagrees. The examiner maintains that the prior art of Fukuda does indeed disclose all of the current structural limitations that are found in claim 21, and it is inherent that if Fukuda and the applicant's invention possess emulative structure (see below) then the prior art of Fukuda is capable of satisfying all of the intended use features of the given claimed invention as well.

In the disclosure of the applicant's invention, when the applicant discusses the above topic, the structure allowing such universal movement in three mutually orthogonal axes is described. On pages 11-12, it is stated that, "each one of the primary magnetic components 112 has a substantially spherical configuration wherein the opposite ends of each one of the spherically configured primary magnetic components 12 define opposite magnetic poles whereby

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adjacent ones of the primary magnetic components 112 can be magnetically connected together in an articulated manner along point contact loci as defined by means of the oppositely disposed magnetic poles". The prior art of Fukuda possesses structure emulative of that as described in the disclosure of the applicant's invention. That is, the prior art of Fukuda possesses "substantially spherical configuration wherein the opposite ends define opposite magnetic poles whereby adjacent ones of the primary magnetic components can be magnetically connected together in an articulate manner as defined by means of the oppositely disposed magnetic poles". Since the prior art of Fukuda discloses the magnetic components having a substantially spherical configuration, magnetically connected together via means of the oppositely magnetic poles, the functionality is therefore inherent as a result of the anticipated structure of the magnetic poles.



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***Conclusion***

[9] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[10] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese  
Assistant Examiner  
Art Unit 3677

DCR

8/9/06

  
ROBERT J. SANDY  
PRIMARY EXAMINER